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## State v. Pearce Respondent's Brief Dckt. 44757

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44757
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2015-17519
	)	
SARAH KATHLEEN PEARCE,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Pearce failed to establish that the district court abused its discretion by relinquishing jurisdiction and executing a reduced unified sentence of seven years, with one and one-half years fixed, upon her conviction for possessing methamphetamine?

Pearce Has Failed To Establish That The District Court Abused Its Sentencing Discretion

In 2004, Pearce was convicted in Canyon County Case No. CR-03-5092 (hereinafter “the Canyon County case”) of conspiracy to commit robbery, robbery, conspiracy to commit first degree kidnapping, first degree kidnapping, aggravated battery, and aiding and abetting

attempted first degree murder. (PSI, pp.62-65, 77-78, 82.<sup>1</sup>) She was originally sentenced to life, with 15 years fixed. (PSI, p.82.) However, in March 2014, pursuant to a stipulation for post-conviction relief, Pearce was resentenced to a unified term of 14 years and 215 days, with three years fixed; was given credit for the 11 years and 215 days she had already served; and was placed on probation for a period of five years. (PSI, p.84.)

In November 2015, Pearce's probation officer filed a report of violation alleging that Pearce had violated her probation in the Canyon County case by, among other things, possessing drug paraphernalia, failing to meet with her supervising officer as directed, failing to maintain employment, using methamphetamine on multiple occasions, failing to seek mental health treatment as directed, and being discharged from a substance abuse recovery program. (PSI, pp.73-75.)

On December 13, 2015, while the probation violation allegations in the Canyon County case were pending, an officer made contact with Pearce in the late evening hours behind a convenience store. (PSI, pp.6-12, 85.) During the contact, Pearce appeared excessively nervous, "exhibited rapid speech and unorganized thoughts," "continually reached for things in different places in [her] vehicle" despite multiple instructions by the officer "to not reach for anything out of [his] view," and "was unable to sit still and was constantly shifting her position in the seat of the car." (PSI, p.10.) Pearce also "had several sores or scars on her face which," "coupled with her behavior," "were consistent ... with chronic Meth use." (PSI, p.10.) Pearce denied having "anything illegal in her car" and gave the officer permission to search the vehicle. (PSI, pp.10, 85.) However, when the officer asked Pearce to exit the vehicle to facilitate the

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<sup>1</sup> As cited herein, "PSI" refers generally to the electronic file "Pearce 44757 psi.pdf." Citations to the page numbers of the PSI correspond to the page numbers of that electronic file (not to the bates stamp numbers that appear on some of the documents therein).

search, Pearce “appeared to be stalling.” (PSI, p.10.) When she finally did start to exit the car, Pearce reached back into the vehicle, dropped a syringe on the passenger seat, and “grabbed something that she was now attempting to conceal in her right hand.” (PSI, pp.10-11, 85.) That “something” consisted of two plastic bags, one containing five syringes—three of which contained a white crystal substance that NIK tested presumptive positive for methamphetamine—and the other containing six hydrocodone pills. (PSI, pp.11, 85.) After he arrested her, the officer also found in Pearce’s wallet several financial transaction cards that did not belong to her. (PSI, p.11.) The officer transported Pearce to the Ada County Jail where, during the booking process, jail deputies discovered two more hydrocodone pills concealed between Pearce’s buttocks. (PSI, pp.11, 22, 85.)

The state charged Pearce, in Ada County Case No. CR-FE-2015-17519 (“the Ada County case”), with possession of methamphetamine, possession of hydrocodone, introduction of certain articles into or from correctional facilities, and possession of drug paraphernalia. (R., pp.30-31.) Pearce’s probation officer also filed three addendums to the report of violation in the Canyon County case, alleging Pearce had violated her probation by being charged with the offenses that formed that basis of the Ada County case, by admitting to additional methamphetamine use, and by being arrested and charged with petit theft after she was caught attempting to shoplift. (PSI, pp.75-76.) Pursuant to a plea agreement in the Ada County case, Pearce pled guilty to possession of methamphetamine, and the state dismissed the remaining charges. (R., p.40.) Pearce also admitted to having violated her probation in the Canyon County Case. (R., p.40.) In the Canyon County case, the district court revoked Pearce’s probation, executed her underlying sentence, and retained jurisdiction. (5/11/16 Tr., p.10, Ls.5-9, p.14, Ls.10-24.) In the Ada County case, the district court imposed a unified sentence of seven years, with three years fixed,

but also retained jurisdiction. (R., pp.57-60.) Following the period of retained jurisdiction, the district court in the Canyon County case suspended the balance of Pearce's sentence and reinstated her on probation. (12/7/16 Tr., p.5, L.24 – p.6, L.2.) The district court in the Ada County case relinquished jurisdiction but, on its own motion, reduced the fixed portion of Pearce's underlying sentence from three years to one and one-half years. (R., pp.68-70; 12/7/16 Tr., p.16, Ls.5-9.) Pearce filed a notice of appeal timely from the district court's order relinquishing jurisdiction in the Ada County case. (R., pp.73-75.)

Pearce argues that the district court abused its discretion by relinquishing jurisdiction in light of the progress she made in the rider program, the fact that she "stabilized her mental health medication regimen," and her claim that the district court's decision to relinquish jurisdiction "delays [her] access to rehabilitative programs." (Appellant's brief, pp.4-8.) Pearce has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984). "While a recommendation from corrections officials who supervised the defendant [during the period of retained jurisdiction] may influence a court's decision, it is purely advisory and is in no way binding upon the court." State v. Hurst, 151 Idaho 430, 438, 258 P.3d 950, 958 (Ct. App. 2011) (citing State v. Merwin, 131 Idaho 642, 648,

962 P.2d 1026, 1032 (1998); State v. Landreth, 118 Idaho 613, 615, 798 P.2d 458, 460 (Ct.App.1990)). Likewise, an offender's "[g]ood performance while on retained jurisdiction, though commendable, does not alone establish an abuse of discretion in the district judge's decision not to grant probation." Hurst, 151 Idaho at 438, 258 P.3d at 958 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

Contrary to Pearce's assertions on appeal, the record in this case supports the district court's determination at the time it relinquished jurisdiction that Pearce was not "ready for probation." (12/7/16 Tr., p.16, Ls.2-4.) After she was released from prison and placed on probation in the Canyon County case in March 2014, Pearce repeatedly violated the terms of her probation, including by using illegal substances and committing new crimes. (PSI, pp.73-76.) Reflecting on Pearce's performance on probation during the year and a half leading up to the commission of the possession of methamphetamine charge to which she pled guilty in the Ada County case, Pearce's supervising officer, Jeremy Wallingford, stated:

[Pearce] has been "difficult to manage, has not been open or honest with her supervising officers, has struggled with substance abuse, and emotional stability." He said "She has continued to break the law and is facing several new charges in Ada, Canyon, and Gem Counties." Officer Wallingford stated, "I believe Ms. Pearce is highly untrusting of the criminal justice system and appears to suffer from negative impacts from prior incarceration. She struggles with PTSD and emotional stability, but has failed to seek or participate in mental health counseling or medication management as recommended." Further, he advised [Pearce] has "failed to take advantage of treatment referrals, funding opportunities, or recovery services offered to her."

Initially, Officer Wallingford was in agreement that [Pearce] would benefit from a period of local confinement as a sanction for her behaviors, followed by or accompanied with "some forced sobriety and an opportunity for intensive treatment and recovery serves [sic], like those offered in a Drug Court Program, Residential Treatment or on a Rider." However, he stated [Pearce] "has had several opportunities to engage in treatment in the community, but chose not to." Officer Wallingford advised, "Of more significant concern were her highly criminal behaviors and actions. Each time she was released from custody, she continued to disregard the law and her probation conditions, resulting in her

arrests for new criminal offenses. This would tend to show that she is not amenable to community supervision and would be likely to continue to break the law should she be placed back on probation and/or released from custody.

(PSI, pp.84-85.) Officer Wallingford ultimately recommended that, “[s]hould [Pearce] be convicted of additional felony crimes, which occurred whilst she was already given the privilege and opportunity for probation,” the “Court consider imposing the remainder of [Pearce’s] underlying sentence in [the Canyon County] case in the interest of public safety.” (PSI, p.85.) The presentence investigator likewise recommended a period of incarceration, noting, based on Pearce’s LSI score of 36 “and other protective factors,” that she was a high risk to reoffend and “would benefit from participation in assessed rehabilitative programs ... and/or pro-social activities” while incarcerated. (PSI, pp.93-96.)

Despite the unanimous recommendation by Pearce’s probation officer, the presentence investigator, and the prosecutor at sentencing (see 5/11/16 Tr., p.10, Ls.5-25) that Pearce’s sentence be executed, and despite its own recognition that Pearce’s record and conduct “easily justifie[d] just imposing sentence” (5/11/16 Tr., p.18, Ls.7-11), the district court retained jurisdiction and thereby gave Pearce the opportunity to demonstrate she was a suitable candidate for probation (5/11/16 Tr., p.18, Ls.14-24). In so doing, the district court specifically cautioned Pearce:

I am not saying that when you conclude your retained jurisdiction I’m going to place you on probation. I am largely doing this for evaluative purposes. Not only would I have to see at the end of that retained jurisdiction that you had adequate support once you were to be released, but you’re going to have to do a really, really good job on the rider and demonstrate to me that you’re not going to be a danger to society and you understand you have control of your addiction.

(5/11/16 Tr., p.18, L.25 – p.19, L.9.)

Contrary to the district court’s admonishments, Pearce did not do “a really, really good job” on her rider. Although Pearce completed all of her assigned programming, rider staff

reported that she “struggle[d] with following institutional rules and had a number of written/verbal warnings and one infraction.” (PSI, pp.136, 141.) Specifically, she received four verbal warnings and two written warnings for various unauthorized behavior, including missing a medical appointment, making a “homemade ring with hobby craft items,” having prohibited physical contact, and “cross communicating” on multiple occasions. (PSI, p.138.) She was also “bunked up” for “cross communication” and was “referred for further disciplinary action” after she used “J-Pay to communicate” with an offender at another correctional facility. (PSI, p.138.) She also received a formal disciplinary sanction and was restricted to her cell for 10 days after she “exposed her buttocks to two offenders sitting in the day room.” (PSI, p.138.)

Ultimately, Pearce received a probation recommendation, but this recommendation was tempered by her case manager’s assessments that “Pearce will struggle with some of the rules of probation,” that, by her own admission, “she needs more rigid supervision and living rules to be successful,” and that her disciplinary incidences “could suggest that the people with whom [she] associates, and the behavior she exhibits as a result of the association, could affect whether or not she follows the expectations of probation.” (PSI, pp.138-41.) These assessments were only bolstered when, “after the APSI was sent to [the court] and while [Pearce was] still in custody,” she “still pretty actively def[ied] the rules ... repeatedly by doing the same thing: cross-communicating and getting into trouble with other inmates out there.” (12/7/16 Tr., p.15, Ls.16-22.) According to the prosecutor, a C-Note dated November 28<sup>th</sup> reported that Pearce “is continually disrespectful and defiant toward staff whenever they deal with her.” (12/7/16 Tr., p.8, Ls.22-25.) In light of Pearce’s continued behavioral and attitude problems, the prosecutor correctly observed: “This is not an individual that is likely to succeed on probation. This is an



individual that does not seem to believe that all of the rules apply to her.” (12/7/16 Tr., p.9, Ls.1-4.)

In deciding to relinquish jurisdiction, the district court reiterated that it had retained jurisdiction for evaluative purposes only and that it had expected Pearce would have paid very careful attention to that admonishment. (12/7/16 Tr., p.14, Ls.20-23.) The court was dismayed that, instead of doing so, Pearce spent much of her rider “fighting against the rules.” (12/7/16 Tr., p.14, L.23 – p.15, L.1.) The court noticed it had no realistic “expectation that everybody’s going to do a perfectly clean rider,” but it did “expect that at some point folks are going to figure out that the path to success isn’t challenging staff all of the time and telling them that they’re wrong.” (12/7/16 Tr., p.15, Ls.1-7.) The court noted that Pearce’s behavior throughout her rider suggested she did not “internalize[] any of the message that [she] was provided through the correction replacement training or any of the other programming that [she was] afforded.” (12/7/16 Tr., p.15, Ls.7-15.) Even “more disturbing,” Pearce continued to “defy[] the rules” even after the APSI was submitted. (12/7/16 Tr., p.15, Ls.16-22.) While the court wanted to Pearce to succeed, and while it was “difficult to divert” from the decision of the court in the Canyon County case, the court determined in its “own individual judgment” that Pearce was not yet “ready for probation” and, thus, relinquished jurisdiction. (12/7/16 Tr., p.15, L.23 – p.16, L.6.)

On appeal, Pearce does not contest any of the district court’s factual findings. Rather, she argues the court “did not give sufficient consideration to the progress [she] actually made in the rider program, and so, failed to sufficiently consider the totality of [her] situation, her character, and her ability to be successful on probation.” (Appellant’s brief, p.8.) The record belies Pearce’s claim. The district court read the APSI and updated C-Notes and was well aware that

Pearce had “completed all programming” during the period of retained jurisdiction. (12/7/16 Tr., p.5, Ls.18-21, p.12, Ls.12-15, p.14, Ls.14-16.) It was also aware, however, that Pearce was defiant and disrespectful towards rider staff and was the subject of multiple disciplinary actions, even after being recommended for probation. (12/7/16 Tr., p.14, L.23 – p.15, L.22.) That Pearce “stabilized her mental health medication” during the period of retained jurisdiction does not show “she was more likely to be successful on probation.” (Appellant’s brief, p.6.) To the contrary, the fact that she “stabilized her mental health medication” but was still unable or unwilling to conform her behavior to the requirements of the structured rider program supports the district court’s finding that her likelihood of success on probation, even while medicated, was dim.

The district court considered all of the relevant information and reasonably determined that Pearce had not demonstrated herself a suitable candidate for probation. The court exercised leniency by *sua sponte* reducing the fixed portion of Pearce’s sentence to just one and one-half years, thereby expediting both her access to rehabilitative programs and her parole eligibility.<sup>2</sup> (12/7/16 Tr., p.16, L.6 – p.17, L.5.) In light of Pearce’s demonstrated inability to comply with the terms of her prior probation, and her failure to make any significant progress in the retained jurisdiction program, the court’s decision to relinquish jurisdiction and execute a reduced sentence was entirely appropriate. Pearce has failed to establish an abuse of discretion.

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<sup>2</sup> According to the Idaho Department of Correction, Pearce was “released to supervision” on July 24, 2017. (See [https://www.idoc.idaho.gov/content/prisons/offender\\_search/detail/71842](https://www.idoc.idaho.gov/content/prisons/offender_search/detail/71842).)

Conclusion

The state respectfully requests this Court to affirm the district court's order relinquishing jurisdiction.

DATED this 4th day of October, 2017.

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of October, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General